# MEMORANDUM

To: Don Clark
From: Carolyn L. Hann, Attorney Advisor, Office of Commissioner J. Thomas Rosch
Re: Telemarketing Sales Rule – Debt Relief Amendments, Comments to Be Placed on the Public Record
Date: June 14, 2010

On Friday, June 4, 2010, representatives from two industry groups, The Association of Settlement Companies ("TASC") and the United States Organization for Bankruptcy Alternatives ("USOBA"), met with FTC Commissioner Rosch, his attorney advisors, and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule.[1]

The representatives stated that debt settlement is a legitimate service that provides substantial and ethical services to consumers. They further stated that while both groups support many provisions in the proposed rule, they have serious concerns about the proposed ban on advanced fees.

The representatives emphasized that the data they have submitted in the course of the rulemaking proceeding show that substantial value is being created for consumers. The representatives stated that TASC members settled $1.1 billion in debt last year. The representatives described debt settlement as an emotional product that can result in extremely positive or negative responses from consumers. The representatives asserted that the advance fee ban would make it untenable for them to continue in business.

The representatives stated that they provide substantial and valuable services to consumers during the pre-settlement period (i.e., before any debts are settled). First, because not all consumers are suitable for debt settlement, the service providers conduct a budget analysis of each consumer as part of the intake process to determine "fit" with the debt settlement model. Second, prior to negotiating settlements, the servicers provide other "high-touch" services for their customers, including budgeting advice and educational information about consumers' rights with respect to debt collection calls and harassment. These "high-touch" services involve substantial time, staffing, and cost, and the service providers need to collect fees to support these services.

The representatives asserted that an advance fee ban would make it challenging, if not impossible, for these pre-settlement services to continue. The representatives further asserted

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[1]In attendance from TASC were: Andrew Strenio, Sidley Austin LLP; Andrew Housser, CEO of Freedom Debt Relief and TASC Board Member; Robert Linderman, General Counsel of Freedom Debt Relief and TASC Vice President; and Wesley Young, Legislative Director of TASC. In attendance from USOBA were: Jonathan Massey, Massey & Gail LLP; John Ansbach, Legislative Director of USOBA; and Samuel Brunelli, Team Builders International.

In attendance from the FTC were: Commissioner Rosch, Beth Delaney, Carolyn Hann, David Shonka, and Allison Brown.

that they have determined, through financial modeling, that if they had to operate under an advance fee ban, it would take them five years before they were cash-flow positive.

The representatives asserted that another problem with an advance fee ban is that a contingency fee model would result in a power shift to the creditors; creditors would know that the negotiator would not get paid anything until a settlement occurs; thus, the creditor would offer smaller debt reductions because it would believe that the negotiator would take any settlement in order to get paid. The representatives further asserted that creditors are advocating for the advance fee ban in this proceeding and in state legislatures because it would help the creditors financially.

The representatives said that the better debt settlement companies engage in significant consumer education about debt collection, and there would be no or little incentive to engage in such education if an advance fee ban is imposed. In addition, the preferable business model would be to get as many people possible enrolled in the program; even if 80% drop out, the company would receive some fees eventually, but this structure would hurt consumers. The representatives argued that by contrast, under the current business model, the servicers have a stronger incentive to screen potential customers for suitability; the representatives asserted that their member companies conduct screening in part to make sure their customers are happy and to protect the companies' reputations.

The representatives said that they do not spread the fees over the entire projected life of the program because at the outset, they do not know how many months it will take consumers to finish the program. One survey, conducted by QSS, reported that half of the consumers who finish the program complete it in two years or less. The representatives argued that if those consumers were scheduled to pay fees over three years, the companies would not be able to collect the entire fee due.

The representatives asserted that they take the self-regulatory role very seriously. A USOBA representative stated that they undertake background checks of member companies; they engage in a secret shopper program; and they suspend a company from membership upon the first violation of their standards and terminate the company upon the second violation; and, finally, in the last 30 days, they instituted a "zero tolerance" policy for use of government imagery in debt settlement advertising. A TASC representative said that the association has strong self-regulatory guidelines and has expelled six or seven companies in the past two years for violating its guidelines.

The representatives recommended that the Commission adopt a safe harbor from the advance fee ban for companies that are providing value to consumers. The proposal is set forth in full in a letter to FTC staff submitted on April 28, 2010 and posted to the public record.

The representatives concluded the meeting by reiterating their arguments as follows:
• there is a great deal of good in the proposed rule; the problem is the advance fee ban;
• it is risky to impose an advance fee ban, as a pure contingency fee model has no track record in this industry;

• these issues are compounded because the Commission does not have authority over nonprofits, which comprise a significant share of the marketplace; and
• if the Commission overshoots and imposes an advance fee van, legitimate and illegitimate industry members will find it untenable to continue in business. Moreover, there will be no way to reconstitute the businesses to try a less restrictive approach.